lightower

August 1, 2016

LIGHTOWER PRESENTATION IN BDS DOCKET

Lightower Background

- Lightower is a privately owned competitive provider of all fiber services (no copper).
- Currently subject to light regulation in which Lightower prices are determined by market forces, although subject to the very general regulation of §§ 201 and 202
- 30,000 route miles, 15,000 connected locations
- Serves enterprise, government, schools, data centers and carriers—including cell site backhaul and small cell
- Since 2013 we have invested approximately one billion dollars ($1,000,000,000) in building out fiber networks—almost all last mile or “metro”
- We invest almost all our free cash flow—approximately $300 million per year—in building last mile fiber networks
- Our capital expenditures are approximately 45% of our revenue—compared to teens for Verizon, CenturyLink, Level 3 and others

WE ARE HELPING SOLVE THE COMPETITION PROBLEM THE COMMISSION IS ADDRESSING

ANY REGULATORY BURDEN AND UNCERTAINTY WILL MAKE IT MORE DIFFICULT FOR US TO CONTINUE TO BUILD COMPETITIVE NETWORKS

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Why Competitive Providers like Lightower Should Not be subject to any New Pricing Regulations

- It is unnecessary (Slides 4 and 5)
- It will REDUCE competition (Slide 6)
- It will be nearly impossible for Lightower to comply with (Slide 7)
- It will be almost impossible for the Commission to administer (Slides 8 and 9)

Regulation of Lightower Pricing is Unnecessary

- Lightower faces competition from the ILEC everywhere it operates
  - ILEC serves virtually every Lightower location
  - In the infrequent case in which the ILEC does not serve a Lightower location, such as a cell site, Lightower's pricing was established in a competitive bidding process in which the ILEC (and often others) participated
- In almost all cases Lightower faces competition from other fiber providers as well
  - At >99% of Lightower locations, customer has 3 or more broadband choices
  - At >80% of Lightower locations, customer has 4 or more broadband choices
- Lightower cannot sell at a price higher than ILEC unless it offers compensating value, such as guarantees of higher quality
- Regulation imposes costs on regulated entities, and should be imposed only where necessary--only where absent regulation, a carrier would have the power to exploit imperfect market conditions
- If the FCC regulates ILEC prices at those locations where it deems competition to be inadequate, Lightower and other competitive fiber providers will never be in a position to exploit imperfect market conditions

THEREFORE, REGULATING THE PRICES OF LIGHTOWER AND OTHER CFPs IS UNNECESSARY

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Regulation of Lightower Pricing is Unnecessary (cont.)

- Pricing for all Lightower offerings has been falling for years—whether calculated on a per megabit or any other basis
- IRR's on new projects have fallen dramatically in the last few years and payback periods have increased

THEREFORE, PRICE REGULATION OF COMPETITIVE PROVIDERS IS UNNECESSARY - INTENSE COMPETITION IS ALREADY RESULTING IN RAPIDLY DECLINING PRICES

Regulation of Competitive Fiber Providers Will Reduce Competition

- Fear of costly and burdensome litigation for which competitive providers are not equipped will discourage investment in facilities-based competition (agree with Level 3)
- Hamstringing competitive fiber providers will reduce the extent of competition, thus undermining the competitive goals that the regulation is designed to achieve.
- Many of our projects barely clear the return threshold required to justify the investment in building new fiber routes
- The uncertainty resulting from price regulation, and the cost of compliance, will cause numerous "marginal" projects to be abandoned—thus REDUCING competitive builds—exactly the opposite of what the Commission seeks to achieve

EXPANSION BY EXISTING PROVIDERS WILL SLOW

NEW ENTRANTS WILL THINK TWICE

Lightower Would have Extreme Difficulty Understanding and Complying with Rate Regulation

- Lightower sells complex solutions—not circuit elements around which traditional rate regulation is based
- Resolving a complex solution into rate regulation piece parts and categories adds no value to the customer and creates another layer of uncertainty for Lightower
  - **This uncertainty imposes risk on us, which discourages investment**
- To comply with rate regulation, CFPs will need to establish new systems and establish a regulatory compliance team
  - **This will impede flexibility of sales team and require retraining**
- Fear of costly and burdensome litigation for which competitive providers are not equipped will discourage investment in facilities-based competition (agree with Level 3)

PROVIDERS WILL ORGANIZE AROUND THE REGULATORY ENVIRONMENT INSTEAD OF CUSTOMER NEEDS

Regulation of Competitive Fiber Providers is Impractical

- Requiring CFP to price based on ILEC’s costs is not authorized by §§ 201 or 202.
- Many types of problems
  - Cost differences (franchise fees, building access fees, rights of way, construction permits, cost of capital, cost of physical inputs)
  - Franchise and building access fees account for approximately 5% of Lightower’s total costs
  - Limits CFP’s ability to compete through innovation in rate structure (e.g. recovering special construction costs in MRC vs. NRC)
  - Rate structure (Lightower sells solutions, not service elements, and prices them as a package; some pieces of the package, such as Internet access, are not regulated)
  - Single-package sales to multi-location customers spanning different ILEC territories, with different benchmarks or price caps
  - Regulation of ILEC pricing is based on basket, not individual rate elements; this gives ILEC the power to make adjustments within the basket to gain competitive advantage over CFPs

Regulation of Competitive Fiber Providers is Impractical (cont'd)

- Allowing for adjustment from benchmark based on cost differences would address this problem, **but would result in uncertainty**
  - Uncertainty takes us back to the problem created by fear of costly and burdensome litigation over whether the rate was consistent with the benchmark
  - Uncertainty increases the cost of capital that results from regulatory uncertainty. This is a particular problem because BDS service is very capital-intensive
- Certainty could be generated by cost studies based on CFP costs, **but this is in itself very costly and burdensome to both the CFP and the FCC**

Proposed Reporting Requirements Would Impede Competition

- Lightower had a difficult and expensive time responding to the 2013 information request
- CFPs are not organized to provide periodic data reporting to FCC or public rate disclosure, so a new disclosure requirement would impose new costs on CFPs that are not new to ILECs
- Cost of periodic data reporting and public disclosure are largely insensitive to sales volume, so cost per dollar of revenue will be much higher for CFPs than for ILECs

NET RESULT IS THAT THE FINANCIAL FEASIBILITY OF COMPETING WITH THE ILEC TO PROVIDE BDS IS REDUCED, DISCOURAGING ENTRY

Provision of Fiber to Cell Sites and Small Cell Should Not Be Regulated

- **CELL SITE BACKHAUL IS EXTREMELY COMPETITIVE – ONE OF THE MOST COMPETITIVE AREAS IN ALL OF TELECOM**
- Backhaul to cell sites and small cells is sold by competitive bidding
- Except in extremely rural areas, there are always multiple bidders for BDS to tower and small cell. These include large nationwide companies and numerous regional entities whose business plans are focused on serving wireless carriers
- Pricing has become very low and many deals are money losers for the bidders—but some bidders see this as a way to get their networks built
- Bidding for these contracts is especially aggressive
- Lightower concurs in CenturyLink's suggestion that "cell-site backhaul should constitute a separate market not subject to price regulation."

Terms and Conditions

- Given differences in market power, regulation of terms and conditions should not extend to CFPs
- Permit ETLs as long as they recover expectation damages
- Permit automatic renewal at current contract price